

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TERRY REED,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 2:18-cv-00675-RSM

ORDER GRANTING PLAINTIFF'S
MOTION FOR ATTORNEY FEES
PURSUANT TO 42 U.S.C. § 406(b)

Presently before the Court is Plaintiff Terry Reed's Motion for Attorney Fees under 42 U.S.C. § 406(b). Dkt. #24. Plaintiff seeks attorney's fees in the amount of \$27,729.16. This amount is calculated as 15% of Plaintiff's retroactive benefits, \$212,837.60, minus the fee of \$4,196.48 previously ordered under the Equal Access to Justice Act ("EAJA"). *Id.* Defendant neither supports nor opposes counsel's request. Dkt. #26 at 2. However, if Plaintiff's netted fee request is granted, "the Commissioner respectfully requests that the Order distinguish between the full amount determined as reasonable under 406(b) and the net amount awarded for payment purpose." *Id.* at 4.

Attorney's fees may be awarded to a successful social security claimant's lawyer for his or her representation before a court pursuant to 42 U.S.C. §§ 406(b). *Straw v. Bowen*, 866 F.2d 1167 (9th Cir.1989). Plaintiff must apply to the Social Security Administration for an award of

1 fees for representation at the administrative level. 42 U.S.C. § 406(a); *Stenswick v. Bowen*, 815
2 F.2d 519 (9th Cir.1987). Under 42 U.S.C. § 406(b), the Court may allow a reasonable fee for an
3 attorney who represented a Social Security Title II claimant before the Court and obtained a
4 favorable judgment, as long as such fee is not in excess of 25% of the total past-due benefits. *See*
5 *Grisbrecht v. Barnhart*, 535 U.S. 789 (2002).

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7 Fee awards may be made under both the EAJA and § 406(b), but the claimant's attorney
8 must refund to the claimant the amount of the smaller fee. *See Grisbrecht v. Barnhart*, 535 U.S.
9 789, 796 (2002). Plaintiff was awarded \$212,837.60 in past due benefits. Twenty-five percent
10 of past due benefits is \$53,209.40. Plaintiff and his counsel have subsequently agreed to a fifteen
11 percent fee from total past-due benefits, *i.e.* \$31,925.64. Dkt. #24 at 6. The Court concludes this
12 amount is reasonable within the meaning of § 406(b). Because the awarded EAJA fees were
13 lesser than \$31,925.64, Plaintiff's counsel is due the net amount of \$31,925.64 minus the
14 \$4,196.48 in EAJA fees that were previously awarded—\$27,729.16. *See Grisbrecht* at 796.

16 CONCLUSION

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18 Accordingly, having reviewed Plaintiff's Motion, the Commissioner's Response, the
19 exhibits and declarations attached thereto, and the remainder of the record, the Court ORDERS
20 as follows:

- 21 1) Plaintiff's Motion for Attorney Fees Pursuant to 42 U.S.C § 406(b) is GRANTED in
22 part. Plaintiff's attorney, Amy Gilbrough, is awarded reasonable fees in the sum of
23 \$27,729.16.
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- 25 2) This net payment of fees comprises 15% of Plaintiff's past-due benefits minus the
26 previously awarded EAJA fees;
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1 3) Any payment of fees is from the claimant's withheld past-due benefits. If the
2 Commissioner has not withheld past-due benefits sufficient to satisfy this order and
3 Plaintiff's attorney reports she is unable to collect the fee from the claimant, the
4 Commissioner will satisfy this order via the procedures in the Program Operation
5 Manual System (POMS) GN 03920.055.C.
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8 IT IS SO ORDERED.
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10 DATED this 27th day of February, 2024.
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14 RICARDO S. MARTINEZ
15 UNITED STATES DISTRICT JUDGE
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